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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,063

01/09/2007

Michael Hopkinson

70346

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86344

7590

07/02/2009

Syngenta Crop Protection, Inc.,
Patent and Trademark Department
410 Swing Road
Greensboro, NC 27409

EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

07/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/580,063</p>	<p>Applicant(s) HOPKINSON ET AL.</p>	
	<p>Examiner COURTNEY BROWN</p>	<p>Art Unit 1616</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 June 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11 and 15-29.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Mina Haghighatian/
Primary Examiner, Art Unit 1616

Continuation of 11. does NOT place the application in condition for allowance because: The Arguments filed June 17, 2009 do not place any of the claims in condition for allowance because the prior rejection filed March 17, 2009 still meets the limitations and the arguments are not persuasive to overcome the rejection. Applicant argues that although Hacker et al. do teach mesotrione in a composition that may be in the form of a suspension concentrate or a suspoemulsion, Hacker et al. do not meet the limitations of the instant claims because the teaching is not specific. However, this argument is not persuasive because as long as Hacker et al. teach the instant limitations, a prima facie obviousness rejection is valid. Further, Applicant claims a suspension concentrate comprising additional active ingredients (see claims 6 and 7 of instant application). Hacker et al. do teach herbicide combinations comprising active compounds such as mesotrione, glufosinate, glyphosate and benoxacor that can be formulated as a suspoemulsion. Applicant also argues that Koltzenburg et al. relates to a nanoparticulate formulation comprising at least one active compound wherein mesotrione just happens to be one of a vast number of the "active compounds" contained within the substantial "boilerplate" provided and that it can be seen from the specific examples provided by Koltzenburg et al. that the invention is primarily directed towards fungicide compositions and that there is no particular focus on herbicides, let alone mesotrione or even sub-micron mesotrione formulations. However, the Examiner disagrees because Koltzenburg et al. do teach nanoparticulate formulations comprising at least one active compound such as mesotrione, glyphosate, and glufosinate. Koltzenburg et al. teach that the mean particle size of the active compounds is preferably less than 500 nanometers and particularly preferably less than 100 nanometers. Additionally, the Examiner wants to remind Applicant that when establishing a case of prima facie obviousness, the whole reference is considered. Lastly, Applicant argues that in reaching a conclusion of obviousness, the Patent and Trademark Office must consider the "invention as a whole," which includes evidence of the invention's unexpected results. Applicant argues that the experiments and data referred to in Table 2 of the instant specification show that the redispersion properties of sediment material and how these are improved when sub-micron mesotrione is used. Upon considering the data in Table 2 of the instant specification, the Examiner agrees that the formulation prepared from the mesotrione millbase having an average particle size (i.e., less than one micron) within the scope of instant claims was significantly easier to re-disperse than the formulations containing the mesotrione millbase outside the scope of the instant invention. However, these results are not unexpected. Koltzenburg et al. teach that it is known that solubility, dispersibility and bioavailability of active compound particles can be increased by expanding the particle surface area, i.e. by reducing the particle size at an identical total amount (see [0004] and [0109]). Koltzenburg et al. additionally teach that the preferable mean particle size of the active compounds is less than 500 nanometers and particularly preferably less than 100 nanometers ([0109]) which is within the scope of the instant claims. Therefore, the claimed invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made because every element of the invention has been fairly suggested by the cited references.

The amendment of claim 6 is entered because it merely corrects a typographical error. Please refer to the Final rejection, mailed March 17, 2009 for any clarifications.